

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

GUSTAVE A. MATSON III, M.D.

Holder of License No. 15992
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-07-0448A

**CONSENT AGREEMENT FOR
DECREE OF CENSURE AND
PROBATION**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Gustave A. Matson III, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement or any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any

1 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any
2 other pending or future investigation, action or proceeding. The acceptance of this
3 Consent Agreement does not preclude any other agency, subdivision or officer of this
4 State from instituting other civil or criminal proceedings with respect to the conduct that is
5 the subject of this Consent Agreement.

6 6. All admissions made by Respondent are solely for final disposition of this
7 matter and any subsequent related administrative proceedings or civil litigation involving
8 the Board and Respondent. Therefore, said admissions by Respondent are not intended
9 or made for any other use, such as in the context of another state or federal government
10 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
11 any other state or federal court.

12 7. Upon signing this agreement, and returning this document (or a copy thereof)
13 to the Board's Executive Director, Respondent may not revoke the acceptance of the
14 Consent Agreement. Respondent may not make any modifications to the document. Any
15 modifications to this original document are ineffective and void unless mutually approved
16 by the parties.

17 8. If the Board does not adopt this Consent Agreement, Respondent will not
18 assert as a defense that the Board's consideration of this Consent Agreement constitutes
19 bias, prejudice, prejudgment or other similar defense.

20 9. This Consent Agreement, once approved and signed, is a public record that
21 will be publicly disseminated as a formal action of the Board and will be reported to the
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force
25 and effect.

1 11. Any violation of this Consent Agreement constitutes unprofessional conduct
2 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("violating a formal order,
3 probation, consent agreement or stipulation issued or entered into by the board or its
4 executive director under this chapter") and 32-1451.

5 12. *Respondent has read and understands the condition(s) of probation.*

6
7  MD
8 GUSTAVE A. MATSON III, M.D.

DATED: 3/25/08

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 15992 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-07-0448A after Board staff conducted a pharmacy survey pursuant to a 1999 Consent Agreement and Order ("Order") requiring a female chaperone to be present during all physical examinations of female patients.

4. The pharmacy survey indicated Respondent prescribed controlled substances to his daughter, mother and a female neighbor between January 2006 and March 2007. A review of the medical records of the three patients by Staff revealed Respondent did not perform a physical examination or establish a doctor-patient relationship prior to prescribing the controlled substances. This is a violation of the statute governing prescribing; however, it does not violate the Order requiring the presence of a female chaperone because Respondent did not perform a physical examination.

5. Respondent also provided twenty-eight prescriptions of Fioricet (a non-controlled substance) to his wife, ("JM") for migraines for approximately thirteen months. There was no documentation that Respondent examined JM prior to prescribing Fioricet. There also was no evidence that Respondent coordinated care and communicated with JM's treating neurologist that he was prescribing Fioricet to JM, even though Respondent was aware that the neurologist was also treating JM for the same problem. Additionally, there was no indication in the record that Respondent considered the possibility and investigated whether the chronic Fioricet caused JM analgesic rebound headaches and was perpetuating JM's migraines.

1 6. The standard of care requires a physician to coordinate care and
2 communicate with concurrently treating physicians and specialists when treating chronic
3 pain.

4 7. Respondent deviated from the standard of care because he did not
5 coordinate care and communicate with JM's treating neurologist while treating her chronic
6 pain.

7 8. The standard of care requires a physician to consider and investigate the
8 possible role of iatrogenic analgesic rebound headache when a patient is consuming daily
9 analgesics.

10 9. Respondent deviated from the standard of care because he did not consider
11 the possibility that the chronic Fioricet he prescribed to JM may have caused her analgesic
12 rebound headache and perpetuated her migraines.

13 10. Respondent's continuous prescribing of Fioricet to JM may have confounded
14 the diagnosis and/or complicated the treatment plan of the neurologist. The neurologist
15 may not have appreciated the possible contribution of analgesic rebound headache to the
16 differential diagnosis. The neurologist may have unknowingly prescribed medications with
17 a duplicative and/or negative impact when taken concurrently with Fioricet and such
18 impact may have resulted in worsening head pain, overdose or death. JM may have an
19 unrecognized addiction to the barbiturate in Fioricet.

20 11. A physician is required to maintain adequate legible medical records
21 containing, at a minimum, sufficient information to identify the patient, support the
22 diagnosis, justify the treatment, accurately document the results, indicate advice and
23 cautionary warnings provided to the patient and provide sufficient information for another
24 practitioner to assume continuity of the patient's care at any point in the course of
25 treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate because there

1 was no documentation that he performed examinations on the patients prior to prescribing
2 medications.

3 CONCLUSIONS OF LAW

4 1. The Board possesses jurisdiction over the subject matter hereof and over
5 Respondent.

6 2. The conduct and circumstances described above constitute unprofessional
7 conduct pursuant to A.R.S. § 32-1401(27)(e) ("[f]ailing or refusing to maintain adequate
8 records on a patient."), A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might
9 be harmful or dangerous to the health of the patient or the public.") and A.R.S. § 32-1401
10 (27)(ss) ("[p]rescribing, dispensing or furnishing a prescription medication or a prescription-
11 only device as defined in section 32-1901 to a person unless the licensee first conducts a
12 physical examination of that person or has previously established a doctor-patient
13 relationship.").

14 ORDER

15 IT IS HEREBY ORDERED THAT:

16 1. Respondent is issued a Decree of Censure for prescribing without
17 performing examinations on four female patients, for failure to coordinate care and
18 communicate with another treating physician of one patient, for failure to consider the
19 possibility that the chronic Fioricet he prescribed to a patient may have been causing
20 analgesic rebound headache and for failure to maintain adequate records.

21 2. Respondent is placed on probation for **five years** with the following terms
22 and conditions:
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1 A. Chart Review

2 Board Staff or its agents shall conduct quarterly chart reviews and/or pharmacy
3 surveys. Based upon the chart review and/or pharmacy surveys, the Board retains
4 jurisdiction to take additional disciplinary or remedial action.

5 B. Obey All Laws

6 Respondent shall obey all state, federal and local laws, all rules governing the
7 practice of medicine in Arizona, and remain in full compliance with any court order criminal
8 probation, payments and other orders.

9 C. Tolling

10 In the event Respondent should leave Arizona to reside or practice outside the
11 State or for any reason should Respondent stop practicing medicine in Arizona,
12 Respondent shall notify the Executive Director in writing within ten days of departure and
13 return or the dates of non-practice within Arizona. Non-practice is defined as any period of
14 time exceeding thirty days during which Respondent is not engaging in the practice of
15 medicine. Periods of temporary or permanent residence or practice outside Arizona or of
16 non-practice within Arizona, will not apply to the reduction of the probationary period.

17 12. This Order is the final disposition of case number MD-07-0448A.

18 DATED AND EFFECTIVE this 5TH day of JUNE, 2008.

19
20 ARIZONA MEDICAL BOARD

21 (SEAL)



22
23 By _____

24 Lisa S. Wynn
25 Executive Director

1 ORIGINAL of the foregoing filed
2 this 5th day of June, 2008 with:

3 Arizona Medical Board
4 9545 E. Doubletree Ranch Road
5 Scottsdale, AZ 85258

6 EXECUTED COPY of the foregoing mailed
7 this 5th day of June, 2008 to:

8 Michael B. Peugnet
9 Broening, Oberg, Woods & Wilson
10 1122 East Jefferson Street
11 Phoenix, AZ 85034-2224

12 EXECUTED COPY of the foregoing mailed
13 this 5th day of June, 2008 to:

14 Gustave A. Matson III, M.D.
15 Address of Record

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Investigational Review